

UNITED STATES DISTRICT  
COURT FOR THE DISTRICT OF  
NEBRASKA

GALLUP, INC.  
1001 Gallup Drive  
Omaha, NE 68102,

Plaintiff,

v.

DEPARTMENT OF EDUCATION  
400 Maryland Ave., SW  
Washington DC 20202-4500,

and

ARNE DUNCAN, in his official  
capacity as Secretary of Education,

Defendants.

Civil Action

COMPLAINT FOR INJUNCTIVE  
RELIEF

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for injunctive and other appropriate relief, and release of agency records requested by plaintiff from defendant Department of Education.

Jurisdiction and Venue

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

Parties

3. Plaintiff Gallup, Inc. is a Delaware Corporation with the largest percentage of its world-wide workforce located in Omaha, Nebraska, which is within the jurisdiction of this Court.

4. Defendant Department of Education ("DOE") is a Department of the Executive Branch of the United States Government. DOE is an agency within the meaning of 5

U.S.C. §552(f).

5. Defendant Arne Duncan is Secretary of Education and heads the Department of Education. Defendant Duncan is responsible for DOE compliance with the laws of the United States and regulations promulgated thereunder, including the laws and regulations at issue in this case.

Plaintiff's FOIA Request

6. By letter to defendant DOE dated September 12, 2011, plaintiff requested under the FOIA "a copy of the most recent winning National Assessment of Educational Progress (NEAP) proposal to include both the technical and cost proposal." Plaintiff's request was in conformance with the requirements for such requests set forth in defendant DOE's regulations.

Defendant's Failure to Respond and Plaintiff's Information Request

7. By one form letter to plaintiff dated September 22, 2011, defendant DOE acknowledged receipt of plaintiff's request and assigned it tracking number 11-02222-F.

8. Defendant was required by 5 U.S.C. § 552 to respond substantively within (20) working days.

9. To date, defendants have not provided the records requested by plaintiff in its FOIA request, notwithstanding the FOIA's requirement of a substantive agency response within (20) working days.

10. Plaintiff's counsel, William E. Kruse, contacted Defendant DOE's FOIA office via telephone on January 12, 2012.

11. Defendant DOE identified Christie Swafford as the DOE employee responsible for answering plaintiff's FOIA request.

12. DOE employee Swafford claimed on the January 12, 2012 call with plaintiff's counsel that plaintiff's request was one of five identical FOIA requests.

13. DOE employee Swafford claimed on the January 12, 2012 call with plaintiff's counsel that there was a "problem" with the response and that she could not tell plaintiff when

defendant could comply.

14. On the January 12, 2012 telephone call, DOE employee Swafford agreed to get an accurate time for compliance and agreed to call plaintiff back with said timeframe.

15. Defendant DOE has not responded to Plaintiff following the January 12, 2012 call referenced in paragraphs 10-14 of this Complaint.

16. Defendants have wrongfully withheld the requested records from plaintiff by failing to respond in violation of United States law.

### CAUSES OF ACTION

#### Violation of the Freedom of Information Act

17. Plaintiff repeats and re-alleges paragraphs 1-16.

18. Defendants' failure to timely respond to plaintiff's FOIA request violates the FOIA, 5 U.S.C. §552, and defendant DOE's own regulation promulgated thereunder.

#### Requested Relief

WHEREFORE, plaintiff prays that this Court:

- A. order defendants immediately to process the requested records in their entirety;
- B. provide for expeditious proceedings in this action;
- C. award plaintiff its costs and reasonable attorney's fees incurred in this action; and
- D. grant such other relief as the Court may deem just and proper.

Respectfully submitted,



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Counsel for Plaintiff